

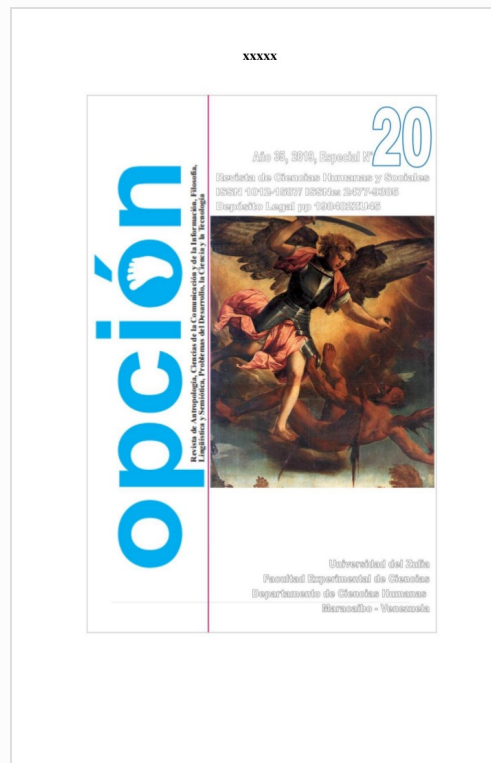


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Local Wisdom Values in the Management Based on Local Democracy Model

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Local Wisdom Values in the Management Based on Local Democracy Model

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Abstract

This article discusses specifically the customary law politics of customary village in the implementation of local government policy in Bali and its implementation in Kuta-Bali Indigenous village via comparative qualitative research methods. As a result, in its original autonomy, the indigenous villages in Kuta do not require the state law and state law-based democratic model in organizing their village heads election. In conclusion, local democracy, especially in the selection of the Kuta-Bali traditional Bendesa, is determined by the value of local wisdom such as customary law, Desadresta, Desamawacara, and the State of Mawatata.

Keywords: Political Law, Local Democracy, Wisdom.

Valores de la sabiduría local en la gestión basada en el modelo de democracia local

Resumen

Este artículo analiza específicamente las políticas de derecho consuetudinario de la aldea consuetudinaria en la implementación de la política del gobierno local en Bali y su implementación en la aldea indígena Kuta-Bali a través de métodos de investigación cualitativa comparativa. Como resultado, en su autonomía original, las aldeas indígenas de Kuta no requieren la ley estatal ni el modelo democrático basado en la ley estatal para organizar sus elecciones de jefes de aldea. En conclusión, la democracia local, especialmente en la selección de la tradicional Bendesa de Kuta-Bali, está determinada por el valor de la sabiduría local, como la ley civil, Desadresta, Desamawacara y el Estado de Mawatata.

Palabras clave: derecho político, democracia local, sabiduría.

1. INTRODUCTION

The island of Bali as a province area has a long history of managing Indigenous villages. In the history of the village in Bali, known to the village dualism are the Indigenous village and the village office. This village office is an extension of the central government to take care of villages throughout Indonesia. However, indigenous villages in Bali have the right of the origin, such as taking care of their own households, having their own rules (awig-awig Pakraman

village), having village profits/village assets, in the form temple land (Pura Desa, Pura Dalem, and Pura Agungl). Indigenous Village is managed and arranged based on customary law, which is then headed by a village chief or village administrators. Indigenous villages in Bali live based on the philosophy of Tri Hita karana with the principle of desa, kala, patra based desa mawa cara, negara mawa tata. With the principle of Desa Mawa Cara, the state has a function that is mawa tata to govern the opportunity for customary villages to remain steady.

History, origins and thoughts of legal politics in Bali involving the role of the Bali Regional Representative Council and the Governor of Bali are very important. As a basis and reason why indigenous villages in Bali are preserved. This considers that the indigenous villages of the Province of Bali which has grown and developed throughout history for centuries have made valuable contributions to the survival of Balinese indigenous peoples. The relationship with Regional Regulation No. 06 of 1986 concerning Traditional Village is that law and society are like two sides of a coin, ubi societas ibi ius (where there are people, there are laws).

In this case, the core law is a tool or means to regulate and to maintain the order in order to achieve a just society in carrying out social welfare in the form of compelling regulations and sanctions for those who break it. In the legal construction contest as a policy of the provincial government of Bali to preserve the indigenous Balinese village and the accompanying cultural assets associated with the election of the indigenous Kuta's chief, in legal products. This will be able to dismantle the historical aspects, the thought of the emergence

of a policy to hold the election of the indigenous Kuta's Chief that adopts and refers to the customary law of indigenous villages, the current political-legal environment so that a paradigm shift emerges in the selection of indigenous Kuta communities (Izadi & Dzikrina, 2017; Tomas, 2010; Soetandyo, 1995).

First Construction, 1986, that the House of Representatives and the Governor of Bali believe in saving indigenous villages from state hegemony (central government) considering that indigenous Villages in Bali have grown and developed throughout history for centuries, have made valuable contributions to the survival of the community and the struggle for independence and development in Bali Province. That in order to preserve the indigenous Village as a customary law community unit originating in Hinduism in the area of Bali. It is also important to mention that the Traditional Village in the Province of Bali is a unit of Customary Law community that has a large role in the fields of religion, State Ideology, socio-cultural, economic and defense and security.

This idea was outlined in Regional Regulation Number 6 of 1986 concerning the Position, function and role of the Adat Village in Bali's First Level Province. Legal construction as outlined in Article 1 paragraph (e) Adat Village as Dresta Village is a customary law community unit in the Bali Level I Province which has a unity of tradition and manners of association for the life of the Hindu community for generations in the Khayangan Tiga bond who have a certain area and own assets and are entitled to take care of their own household. It was also stated in Article 7 paragraph (1) that each

traditional village must have written awig-awig; Paragraph (2) Awig-awig Adat Village may not conflict with Pancasila, the 1945 Constitution and the prevailing laws and regulations. Article 10 paragraph (1) Adat Village is led by indigenous village chief; Paragraph (2) indigenous village chief is chosen and determined by each traditional village man.

In Article 10 paragraph (2) it can be emphasized that indigenous village chief has the right to choose chief not accommodating the product of the Law issued by the State on Pure Regional Government uses the implementation and enforcement of customary law Kuta in the election of the village chief. The understanding of the Kuta indigenous people is formalistic towards customary law and customary law are mouthpieces that must be applied in the selection of chief, less constructing factors outside customary law indigenous villages Kuta, customary law is the only one who is considered valid in the election of the village chief (Fitriatus & Ahmad, 2015; Tambunan, 2018).

Second Construction, the revocation of Regional Regulation Number 6 of 1986, and the replacement of Regional Regulation Number: 3 of 2001, concerning the indigenous village. That indigenous Village as a Customary Law community unit imbued by Hinduism and cultural values that live in Bali has a very large role in the field of religion and socio-culture so that it needs to be nurtured, preserved and empowered. Article 1 letter (18) Pengayoman is to provide protection to indigenous Village; Article 1 letter (19) Empowerment is a series of active efforts so that the condition and existence of indigenous village can be sustainable and become stronger

so that it plays a positive role in development. While preservation is an effort to preserve and maintain the values of Balinese cultural customs, especially the values of ethics, morals and civilization which are the core of Balinese customs and traditions so that their existence will be maintained and continued.

Regional Regulation on indigenous Village, article 7 paragraph (1) indigenous Village is led by indigenous village chief; Paragraph (2) village chief is chosen or determined by the Indigenous Village people according to the rules stipulated in the customary law; paragraph (3) the structure and structure of the village chief are arranged in customary law, indigenous Village. The management and use of pakraman village management are regulated in customary law. Article 11 paragraph (1) every Pakraman village expresses its customary law; paragraph 2, customary law, the pakraman village must not be contrary to religion, Pancasila, the 1945 Constitution, and human rights. With the power, political relation (Indonesian Democratic Party of Struggle) in the Bali's provincial assembly as the winner of the 2004-2009 elections. The state protects, recognizes and respects, the customary law community units and their traditional rights as long as they are still alive (UUD Article 18B paragraph (2) (Dahlan, 1999).

Legal politics in indigenous villages in Bali, in general, is a local community's resistance to legal products that public policymakers should respond to in Bali. The law that criminalizes local communities (indigenous villages) and state hegemony against traditional villages in Bali with the issuance of Law Number 5 of 1979 concerning the village which states as follows: In accordance with the

nature of the Unitary State of the Republic of Indonesia, the position of the government of the village government as far as possible is uninformed, by heeding the diversity of village conditions and the prevailing customary provisions to strengthen the village government in order to be able to mobilize the community in its participation in the development and administration of village administration more widespread and effective.

The above concept is complementary which at the same time shows the quality of the centralistic regime, in this case, what is done not only places the village as the spearhead, footwear (as the lowest unit organ) but also is determined to homogenize villages or communities in (local) communities in the same scheme. Because of the uniformity of villages in Indonesia, traditional villages in Bali have a value of local wisdom (uniqueness) which is not owned by other villages in Indonesia with genuine autonomy not giving the state. The value of local wisdom is that indigenous villages in Bali have certain areas (indigenous village areas), own wealth (pelaba pura and property rights), have customary law to regulate their citizens, have village leaders, and village security (Sava, 2016; Piteira et al., 2018).

The meaning of legal protection for traditional villages in Bali, namely after the implementation of Law No. 5 of 1979 concerning the village, then progressively and the Governor of Bali, the Head of Bali's First Level Region and the Regional People's Representative Assembly protectively and progressively protect indigenous villages in the form of public policies born Regional Regulation number 6 in 1986 concerning the position, function and role of traditional villages as a

unit of customary law community in Bali's first level provinces. Article 7 concerning customary law Indigenous Village, namely paragraph (1) Every traditional village to have customary law indigenous villages; (2) customary law of traditional villages must not conflict with Pancasila, the 1945 Constitution and the prevailing laws and regulations.

Especially regarding the indigenous village chief (Article 10 paragraph (1): Traditional village led by indigenous village chief; (2) indigenous village chief is selected and determined by each of the indigenous Village manners; (2) The structure and composition of the indigenous village chief are regulated in customary law indigenous village. In the indigenous village chief of Kuta election in 2008-2013 based on Kuta Indigenous Village customary law Indik Prajuru / Adat Village Administrators namely Pawos / Article 14 paragraph (1) Kuta Traditional Village was led by village chief; Paragraph (2), Banjar Suka-duka is led by a community leader. Article 14 paragraph (3) Village / Bendesa Adat and Kelian Suka-Duka Kelian come from (Riant, 2013):

- (1) Indigenous Villagers/Indigenous community Residents;
- (2) The selection of custom Bendesa is held every five years;
- (3) Received ratification and assignment from God Almighty, who take place at the Kahyangan Temple, indigenous Village, Kuta.

Kuta indigenous Village Management Structure, in accordance with customary law of indigenous villages, Article 15 paragraph (1) kuta village chief is accompanied by (1) Pangliman (Deputy Customary Village), (2) penyarikan (secretary); (3) Petengen treasurer

and (4) Kesiroman (traditional village courier/public relation). In the selection of the Kuta indigenous village chief an election committee was formed and the inauguration committee for indigenous Kuta people. The traditional village selection system is as follows: Direct, meaning that the Kuta indigenous village chief is directly chosen by the traditional Balinese village, without being represented.

1. General, meaning that all krame ngarep Desa Adat Kuta has the right to choose and be chosen.

2. Free, meaning that all krame ngarep Desa Adat Kuta in using their voting rights guaranteed freedom without any element of coercion.

3. The secret, meaning that the traditional Balinese village people use their voting rights will be guaranteed confidentiality.

Then as for the prospective requirements of Kuta village chief are as below.

1. Every Banjar indigenous community of Indigenous village of Kuta has the right to propose a candidate for Kuta indigenous village chief with the following criteria.

- a. Krame ngarep Indigenous Village.
- b. Physically and mentally healthy.
- c. Minimum age of 40 years.
- d. Minimum high school education or equivalent or ex-indigenous village or former chief likes and sorrows.
- e. Not being a party administrator at various levels.
- f. Not being a banjar administrator and administrator of community organization

- g. Not carrying out criminal and civil law processes.

Based on the results of the interview of the researcher, with the election committee chairman of the indigenous Kuta Bendesa, that: In addition to the main norms used are customary law, then guidelines for Organizing the Election and Inauguration of indigenous village chief for the 2008-2013 Term of Service, there are special rules that must be obeyed by a candidate for the village, ie first, the lowest age is 40 years, second, may not sit in the party management structure at all levels. In this screening process, the committee recruit's prospective candidates for each village, and each banjar proposes manners according to the requirements specified by the committee.

The method of screening in the banjar of the people who proposed to the banjar, then the banjar who filtered and sent to the committee. The emergence of indigenous village chief candidates from this banjar by the committee, confirmed that the prospective indigenous candidates from this banjar, were not candidates for indigenous adat from the banjar or party candidates, but candidates from Kuta Traditional Village who had passed in stage I. (Interview with I Made Mastra, SH, Chairperson of the Kuta Indigenous Bendesa Election Committee 2008-20013, 21 September 2008).

Based on the aforementioned expression, a candidate for village chief is very strict in terms of age, not sitting in one party at all levels of the board to guarantee the neutrality of an indigenous community. What was conveyed by the Chairman of the Election Committee of village chief, I Made Mastra, S.H. above, indirectly accommodating the thinking of Customary Regulation No. 3 of 2001, explanation of

Article 3, Paragraph (1), states that in this case, including how village staff can anticipate and minimize the inclusion of political and economic interests in taking the decision, which could eventually trigger the emergence of cases of human rights violations in the name of custom.

The right to vote and be elected, can be explained as follows: in the right to vote for chief village, it is the custom of the indigenous people of the traditional village of Kuta, widow/widower, and also active members of the National Police as the right to vote, but for citizens of the National Police and widows who have no right to select (Indriastuti, 2019).

Indonesia's legal policy on villages has ups and downs in accordance with the interests of the state in transforming its society. When the law is played as a social engineering tool (the law is a tool of social engineering), the placement of legislation in a position that is very important in regulating the life of society. The legal concept as a social engineering tool was first introduced by Roscoe Pound. This concept was then developed in Indonesia by Mukhtar Kusumaatmadja, namely the use of law as a means to engineer society according to government policy (executive) scenarios. The use of law as a means of changing society towards what is aspired. Democracy in the context of local wisdom is well known for the village concept of *desa mawacara*, namely the village's right to regulate itself in accordance with the tradition that developed in the indigenous village in Bali.

However, things that are quite important in democracy in the national (central) context, then there is a balancing concept from *desa*

mawacara namely the concept negara mawatata, that is, the state regulates the life of indigenous villages in Bali, even inside penyuratan/customary law arrangement in Bali, it may not conflict with the laws and regulations. In the implementation of the traditional village life in Bali known as catur dresta, yaitu 1) kunadresta, is truth based on traditions inherited from generation to generation; 2) lokadresta, namely habits that apply only locally to an area; 3) Desadresta, namely a unique tradition or habit and applies only to a particular village; 4) sastradresta, namely teachings that are based on Hinduism. In this case, the truth that comes from sastradresta has the highest level.

Local democracy in Kuta Traditional Village, especially in the selection of indigenous villages, adopts local cultural values especially Desadresta, the customary law of Kuta indigenous village, especially concerning the article about the selection of indigenous village chief, as well as Local Government Law number: 34 of 2004. According to I Nyoman Sirtha, that law means social, when the law is inseparable from people's behavior exposed to the rule of law. Laws that function effectively to regulate the interests of community groups at certain times, places and social situations indicate that the law is socially meaningful. The phenomenon is the meaning of social law, social action, social interaction, indigenous groups/Kuta indigenous villages, and social change.

The law that is applied in the selection of the traditional Kuta village is a local law, (based on customary law of Kuta's Indigenous village) by adopting National law relating to the laws of the

Government and the Village administration. Considering that the legal products produced by each era have an episteme or system of thought that leads to the practice of science at certain times, such as the Local Village Regulation and customary law including in the context of the selection of indigenous Kuta communities.

2. CONCLUSION

The implementation of legal politics in the New Order era experienced a tidal process related to legal products implemented in indigenous villages in Bali. State hegemony is very strong in the New Order era in legal products that are applied in traditional villages in Bali. The legal product of Law Number 5 of 1979 concerning Villages only regulates the official village (kelurahan). But the legislative response of the Bali's regional council and the New Order ethics executive also constitutes an inseparable part of the rescue and legal protection of traditional villages in Bali. This is evidenced by the birth of Regional Regulation Number 06 of 1986 concerning Indigenous Villages. When the Reformation Era there was a new policy and a new paradigm in rescuing the indigenous village called with the issuance of Regional Regulation Number 3 of 2001, concerning the indigenous village.

The rescue of cultural assets such as Pacalang (security), and in socio-cultural activities and religious organizations in the presence of religious tolerance, and in the selection of a candidate for village chief

is not allowed to be involved in practical political content, because the point is that a traditional village is carrying out the duties of religion, culture, customs and customary law as legal law, in addition to laws and regulations. The construction of legal politics in Bali in the context of the traditional Kuta village in the reform era reflects a paradigm shift in the model of nominating candidates for traditional Kuta practices. This can be seen from the changes, namely during the New Order the system of selecting candidates for the traditional Kuta village only paid attention to references or legal law in the customary law of the indigenous village of Kuta.

The Era of Reformation in the selection of bendesa adat also refers to the Bali Provincial Regulation Number: 3 of 2001 concerning the indigenous village. Village chief Election Committee also includes a condition that a customary village does not become a political party administrator at all levels. The impact and meaning of state law politics on the value of local wisdom in the selection of indigenous Kuta villages reflects the norms and values of Balinese local wisdom to function and mean socially, given the values that exist in awig-awig customary law of indigenous village of Kuta very much determine the course of the selection of indigenous Kuta chief. Local Balinese legal politics (protection of traditional villages) and the State recognizes and respects the customary law community units and their traditional rights.

Then these rights continue to be maintained by the Balinese Hindu community because Hindus are culturally in accordance with philosophy Tri Hita Karana, and its place in Indigenous village/village

as a stronghold of Balinese culture. Local democracy, especially in the selection of the Kuta-Bali traditional Bendesa, is determined by the value of local wisdom such as customary law, Desadresta, Desamawacara, and the State of Mawatata. In fact, the legislation of the country as a local law adopted by Indigenous Village Governments in Bali, especially in the Kuta Traditional Village is a model that must be protected by the state by the presence of the state in legal products to maintain traditional villages in Bali.

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